IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

AS.No. 671 of 1994()

OS.121/1990 of SUBORDINATE JUDGE'S COURT, TIRUR

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APPELLANT/11TH DEFENDANT:

AREEKKALCHOLA MUHAMMED'S SON EANIKUTTY, KLARI AMSOM AND DESOM, TIRUR TALUK.

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS/PLAINTIFF, D1 TO D10 AND D12 TO D14:

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1. KAZHUNGIL DECEASED ALAVI'S DAUGHTER AYISHA UMMA, NELLIPOYIL AMSOM, KODAN CHERI DESOM, KOZHIKODE TALUK.

2. KAZHUNGIL THAMASIKKUM DECEASED ALAVI'S WIFE AREEKKALCHOLA PATHUMMAKUTTY UMMA, KLARI AMSOM, TIRUR TALUK.

3. CHILDREN - KAZHUNGIL THAMASIKKUM MAMMI, RESIDING AT -DO-

4. -DO- -DO- PAKKU, -DO- -DO-

5. -DO- -DO- MOIDUTTY, -DO- -DO-

6. PARAYIL THAMASIKKUM KAZHUNGIL PATHUMMA UMMA, RESIDING AT KOMUR AMSOM DESOM, PERINTALMANNA TALUK.

7. VILLAN @ VEETTIL THAMASIKKUM KAZHUNGIL NABESSUMMA, RESIDING AT CHERUR AMSOM, TIRUR TALUK.

8. CHOKKATTU THAMASIKKUM KAZHUNGIL AMINA UMMA, RESIDING AT KODUVAYUR AMSOM, ERNAD TALUK.

9. NEELIYATTU THAMASIKKUM KAZHUNGIL SAFIYA, RESIDING AT PONMUNDAM AMSOM DESOM, TIRUR TALUK.

10. AVARANKUTTY'S CHILDREN, CHERUKATTIL ABOOBACKER, RESIDING AT KLARI AMSOM AND DESOM, TIRUR TALUK.

11. BROTHER MOHAMMEDKUTTY, -DO- -DO-

12. PUTHUKKATTI KUNHATTU HAJI'S SON VEERANKUTTY HAJI, PONMUNDAM AMSOM DESOM, TIRUR TALUK.

13. NAMBIYARATHU KUNHI ABOOBACKER'S SON ALAVI, RESIDING AT KLARI AMSOM AND DESOM, TIRUR TALUK.

14. AREEKKALCHOLA MUHAMMED'S SON MUHAMMEDKUTTY, RESIDING AT -DO- -DO-

BY ADV. SRI.R.RAMADAS

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.671 of 1994

Dated, this the 26th day of October, 2007

JUDGMENT

11th defendant in O.S.No.121/1990 on the file of the Subordinate Judge's Court, Tirur is the appellant. Appeal is filed against a preliminary decree passed by the court below for partition. First respondent/plaintiff filed a suit for partition contending that she is having seven shares out of 88 shares. Appellant filed a written statement contending that already a partition took place and even if the plaintiff was having any right over the plaint schedule properties the same was lost by adverse possession. Trial court after elaborately considering the issues found that the plaintiff is having right over the plaint schedule properties and passed a preliminary decree allowing partition. Challenging that preliminary decree this appeal is filed.

2. The appellant is an alienee from some of the sharers. The main contention raised was that the plaintiff went away from the family in the year 1973 and thereafter her whereabouts were not known and the properties were partitioned among the other sharers treating the plaintiff dead. Trial court after discussing the evidence found that the contention was not correct and the plaintiff was entitled to get 7 shares out of 88 shares. That is a finding of fact based on good evidence. I do not find any reason to interfere with such a finding of fact.

There is no merit in the appeal. It is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

A.S.No.671 of 1994

JUDGMENT

26th October, 2007.